

WILLIAM L. STERN (CA SBN 96105)  
 WStern@mofo.com  
 MORRISON & FOERSTER LLP  
 425 Market Street  
 San Francisco, California 94105-2482  
 Telephone: 415.268.7000  
 Facsimile: 415.268.7522

ERIN M. BOSMAN (CA SBN 204987)  
 EBosman@mofo.com  
 JULIE Y. PARK (CA SBN 259929)  
 JuliePark@mofo.com  
 KAI BARTOLOMEO (CA SBN 264033)  
 KBartolomeo@mofo.com  
 MORRISON & FOERSTER LLP  
 12531 High Bluff Drive  
 San Diego, California 92130-2040  
 Telephone: 858.720.5100  
 Facsimile: 858.720.5125

Attorneys for Defendant  
 FITBIT, INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

KATE MCLELLAN, TERESA BLACK,  
 DAVID URBAN, ROB DUNN, RACHEL  
 SAITO, TODD RUBINSTEIN, RHONDA  
 CALLAN, JAMES SCHORR, and BRUCE  
 MORGAN, Individually and on Behalf of All  
 Others Similarly Situated,

Plaintiffs,

v.

FITBIT, INC.,

Defendant.

Case No. 16-cv-00036-JD

**DEFENDANT FITBIT, INC.'S RESPONSE  
 TO ORDER RE: ORAL ARGUMENT ON  
 THE *BRENNAN V. OPUS BANK* ISSUE  
 [DKT. NO. 65]**

Date: To be decided  
 Time: To be decided  
 Ctrm: 11, 19<sup>th</sup> Floor

The Honorable James Donato

JUDITH LANDERS, LISA MARIE BURKE,  
 and JOHN MOLENSTRA, Individually and on  
 Behalf of All Others Similarly Situated,

Plaintiffs,

v.

FITBIT, INC.,

Defendant.

Case No. 16-cv-00777-JD

1 Defendant Fitbit, Inc. (“Fitbit”) provides the following response to the Court’s  
2 September 9, 2016 Order regarding oral argument on the “*Brennan v. Opus Bank* issue” (Dkt.  
3 No. 65):

4 As set forth in Fitbit’s briefing, Fitbit believes that the parties’ agreement to delegate  
5 issues of arbitrability to the arbitrator, and the application of *Brennan*, is clear and  
6 straightforward. Fitbit respectfully submits that oral argument is unnecessary.

7 Should the Court disagree, Fitbit asks that one of the two associates most knowledgeable  
8 about this matter—Julie Y. Park or Kai S. Bartolomeo—be permitted to present oral argument.  
9 Ms. Park and Mr. Bartolomeo are eighth-year associates, but they are most familiar with the  
10 issues and were involved in the briefing. Unfortunately, there are no associates of the appropriate  
11 vintage who are sufficiently familiar with the issues.

12 Fitbit discussed this response with Plaintiffs’ counsel and understands they have no  
13 objection to Ms. Park or Mr. Bartolomeo presenting oral argument.

14  
15 Dated: September 15, 2016

MORRISON & FOERSTER LLP

17 By: /s/Erin M. Bosman  
18 Erin M. Bosman

19 Attorneys for Defendant  
20 FITBIT, INC.